IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 27 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANSINH RAISINH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 27 of 2000

MR EE SAIYED for Petitioner No. 1

MS NANDINI JOSHI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/01/2003

ORAL JUDGEMENT

1. This is a Revision Application under Section 397, read with Section 401 of the Code of Criminal Procedure,

1973, (for short "the Code"), challenging the judgment and conviction order, dated 18/01/2000, recorded by the learned Additional City Civil and Sessions Judge at Ahmedabad, in Criminal Appeal No. 60 of 1999, under which the learned Additional City Sessions Judge dismissed the said appeal of the present petitioner and confirmed the judgment and conviction order recorded on 09/08/99 by the learned Metropolitan Magistrate, Court NO. 5 at Ahmedabad, in Criminal Case No. 2070 of 1995, convicting the present petitioner for an offence punishable under Section 66(1)(b) of the Bombay Prohibitions Act, 1949, for short "the Act".

2. The facts of the case may be briefly stated as follows:

The Police Sub-Inspector, Mr. Chudasama was on his duty at Railway Station Platform, at Ahmedabad, from 8.00 pm on 29/06/94, for a period of twelve hours. It seems that the present applicant, who is also a member of police force, was found drunken at that place on 29/06/94, at night hours. He was arrested in presence of panchas and panchnama was drawn, showing the physical condition of the petitioner. He was taken to the Police Station. Then, he was sent to the Medical Officer for medical examination, with a request to the Medical Officer to collect blood sample from his body. The Doctor examined him and collected blood sample from the body of the applicant. The said blood, was then sent to the Chemical Analyzer. At the same time, the concerned PSI undertook investigation and at the close of the investigation, chargesheet was filed against the applicant, for offences punishable under Sections 66(1)(b) and 85(1)(3) of the Act.

3. It was, therefore, alleged against the petitioner that he was found drunk in a public place and had consumed illicit liquor, without pass or permit.

4. When chargesheet was filed before the learned Metropolitan Magistrate, copies of police investigation papers were supplied to the petitioner. Plea was recorded and the petitioner pleaded not guilty to the said charge. Thereafter, evidence was recorded. At the conclusion of the evidence, further statement of the petitioner was recorded, under Section 313 of the said "Code". The arguments were heard and thereafter, the trial court found that, the applicant was not proved to have been found in a drunken position, in a public place and therefore, the trial court acquitted the applicant

for an offence punishable under Section 85(1)(3) of the said Act.

5. However, the trial court found that it was proved that the petitioner had consumed illicit liquor without pass or permit, and therefore, the trial court convicted the applicant for an offence punishable under Section 66(1)(b) of the said Act. Accordingly, the applicant was sentenced to suffer Simple Imprisonment for three months. He was required to pay a fine of Rs.500/- and in default of payment of fine, he was required to undergo further SI for one month.

6. Feeling aggrieved by the said judgment and conviction order, dated 09/08/99, of the learned Metropolitan Magistrate, the petitioner preferred Criminal Appeal No. 66 of 1999, unsuccessfully, before the City Sessions Court at Ahmedabad. Hence, this Revision Application.

7. In the present Revision Application, it has been contended that the petitioner herein, had committed no offence, that the Medical Officer has not given detailed evidence, as to how the blood was collected from the body of the petitioner, that the process of collection of blood was not in accordance with "Rules" of the Bombay Prohibitions (Medical Examination and Blood Test) Rules, 1959. That, therefore, legal presumption, that the petitioner had consumed illicit liquor, without pass or permit, could not arise. That, therefore, the judgment and conviction order recorded by the Court below, are illegal and perverse, and deserve to be set aside. The applicant has therefore, prayed that the present Revision Application, be allowed, the judgments and conviction orders, recorded by the two Courts below, be set aside, the applicant be acquitted of the offence in question, and he may be set at liberty forthwith.

8. On receiving the Revision Application, the same was admitted and was placed for regular hearing. Today the matter was argued by Mr. E E Saiyed, learned advocate for the applicant and Ms. Nandini Joshi, learned APP on behalf of respondent - State. It is not much in dispute, that the applicant was found on a Railway Platform on 29th June, 1994, at night hours, and he was arrested and brought to the Police Station. FIR was filed. The applicant was taken to the Medical Officer. Sample of blood from his body was collected. The blood sample was then sent to the Chemical Analyzer and his opinion was also obtained. As per the opinion of the Chemical Analyzer, the said blood contained more than

0.05% v/w of Alcohol and therefore, the prosecution claims to be entitled to a legal presumption that the petitioner had taken illicit liquor and therefore, he was prosecuted and dealt with by the two Courts below according to law.

9. The main contention raised on behalf of the petitioner by Mr. E E Saiyed, is that, as per the evidence of the Medical Officer, the blood sample would not be fit for examination, if anticoagulant and preservative are not added to it.

10. Here, the Medical Officer, Dr. K R Patel has given oral testimony, at Ex. 11, and there he has positively deposed that he had added anticoagulant and preservative in adequate quantity in the blood. He has denied a suggestion, that he had no idea at that time, as to what was the required quantity of anticoagulant and preservative to be added in the blood. This is a question of fact and it has been dealt with by the two courts below and both the courts were satisfied that the Medical Officer, had added adequate quantity of preservative and anti coagulant. Therefore, it is not open to this Court to interfere with the said finding of fact, recorded by the two courts below. Even otherwise, it is not the case of the Chemical Analyzer, that the blood sample of the petitioner was found in a decomposed stage. In that view of the matter, this evidence supports the evidence of the Medical Officer and therefore, the finding recorded by the two courts below, that adequate quantity of preservative and anticoagulant were added, is further supported by the said evidence also and there is no reason to interfere with the said finding of fact recorded by trial court and confirmed by the Sessions Court.

11. It is also argued that as per the evidence of I.O., the petitioner was in the Police Station and he was not allowed to go out of the Police Station, after 10.20 PM. It is required to be considered that the said PSI has positively deposed before the trial court that the FIR was filed before 12.00 midnight on 29th June, 1994, and the applicant was sent to the Medical Officer also. The said evidence of the Investigation Officer is supported by the oral evidence of the Doctor and by the Certificate issued by him in "Form A" which shows that the applicant was brought to him at 11.30 PM, on that night. This clearly shows that the applicant was really taken to the Doctor. It is true, that the PSI has said in his evidence that the applicant was not taken out of the Police Station, after his arrest at 10.20 PM. It has

been argued that this is a contradictory evidence given by the PSI. In my opinion, the only inference which can be drawn from the above evidence of the PSI would be that the applicant was not taken out of the Police Station for any other purpose. So far, the Medical Officer is concerned he has positively deposed that the applicant was sent to him which has been supported by the evidence of the Medical Certificate issued and produced by him. Therefore, it could be said that the applicant was taken only to the Medical Officer and not to any other place. Even this would be a question of fact and the two Courts below were require to deal with and decide the same as a question of fact.

12. It is then been argued that Rule 4 of the said "Rules" has not been followed by the Medical Officer. The Medical Officer has clearly deposed that he had used disposable syringe. It has been argued that "Rules" require that the Medical Officer should have used sterilized syringes. It is required to be considered that this Rule is required to be followed in spirit and not in words. When a disposable syringe has been used, then it has to be accepted that "Rule" has been followed in substance and spirit, by the Medical Officer. It is required to be considered that the use of sterilized syringes may not be prevalent at the time when the "Rules" were framed in 1959. When science has developed and when disposable syringes are freely available, then in that event, it would not be technically necessary for the Medical Officer to use sterilized syringe, when, he was provided with disposable syringe. In fact, disposable syringe may be more effective, than the sterilized syringes, because, if some defect has remained in the process of sterilization of a syringe, then the result might be defective. On the other hand, the disposable syringes are totally immune from all bacterial defects and therefore it has to be accepted that Rule 4 of the said "Rules" has been followed in spirit and substance, and therefore, the Medical Officer can not be said to have committed violation of Rule 4 by utilizing disposable syringe and not sterilized syringe.

13. It has already been held by this Court (Coram : H. H. Mehta, J.) in a case of Avadh Bihari Amrutlal v/s State of Gujarat, reported in 2000 GLR(3), 2386, that all the requirements of R.4 are not required to be followed in a strict manner.

14. Once it is found that the evidence of the Medical Officer is reliable and that he has followed the mandatory and even directory requirements of the Rules in

general and Rule-4 in particular, in substance and in spirit and that there is substantial compliance thereto, then in that event, we can look to the C.A. report which says that the blood of the petitioner contained 0.1415 percent, wight in volume, then in that case, a statutory presumption would arise, as envisaged in sub-section (2) of Sec. 66 of the said Act. There it is said that if it is proved that the concentration of alcohol in the blood of the accused is not less than 0.05 percent w/v, then the burden of proving that the liquor consumed was a medicinal preparation, which was consumed in a quantity not in excess of recommended dose etc. rests on accused. In the present case also, the prosecution is entitled to such a statutory presumption and the petitioner nowhere even made any attempt to rebut the said presumption. This again goes to show that the petitioner is proved to have consumed illicit liquor without pass or permit, since he does not raise the plea that he held such a pass or permit.

15. It has also been argued that the applicant has been acquitted for an offence punishable under Section 85(1)(3) of the said Act, and therefore, the two courts below could not have convicted him for an offence punishable under Section 66(1)(b) of the said Act only.

16. The two findings are different. An offence under Section 85(1)(3) of the said Act would be committed only when the person concerned is found under the influence of alcohol and is found to be unable to take care of himself in a public place. In other words, the accused must be found in a disorderly manner, in a public place. If that is not there then the accused cannot be convicted for the said offence. On the other hand, for committing an offence punishable under Section 66(1)(b) of the said Act, it would be completed as soon as the person consumes illicit liquor without having pass or permit, for consuming the same. For that purpose, it is not necessary that the accused should be under deep influence of alcohol or that he should be in a public place. In the present case, we find that the applicant was found to have consumed illicit liquor. The alcohol that was found in his blood, was more than 0.05% v/w. The prosecution has become entitled to the legal presumption that the accused has consumed illicit liquor. It is nobody's case that the applicant possessed pass or permit. Therefore, it is very clear that the prosecution has produced evidence before the trial court that the applicant consumed illicit liquor without pass or permit and thereby committed an offence punishable under Section 66(1)(b) of the said Act. Therefore, this being a

question of fact it would not be required to be dealt with, again and again, in a revisional jurisdiction. When the trial court as well as the appellate court have committed no error in law, it would not be open to this court to interfere with the judgments and conviction orders recorded by the two courts below.

17. It has also been contended that about eleven persons were accused on that date and therefore, eleven phials of blood were collected and sent to the Chemical Analyzer. Now, when each sample was separately collected, sealed, packed and sent and when each was separately examined by the Chemical Analyzer, it cannot be said that there was a possibility of a wrong opinion by the Chemical Analyzer. In other words, it cannot be said that the opinion which has been tendered by the Chemical Analyzer in respect of the blood sample of the applicant was really not relating to the blood of the applicant, but may be relating to some other persons' blood sample collected from the body of another person. This is again a question of fact on which finding of fact has been recorded by the two courts below. It seems that this aspect was not seriously challenged with before the Sessions Court also. Therefore, this aspect of the case does not help the present petitioner.

18. Mr. E E Saiyed has lastly argued that punishment be appropriately reduced, having reqard to the fact of his poverty and liability of family. The poor petitioner could afford to drink liquor. He was a responsible Police Head Constable who was duty bound to catch and arrest the persons drinking illicit liquor. Instead, he himself violated law and drank illicit liquor. He could effort to contest litigation upto this Court. This Court cannot show any mercy to him.

19. In above view of the matter, I find that there is no merit in the present revision application and it deserves to be dismissed. Accordingly, this revision application is ordered to be dismissed. The judgment and conviction order of the two courts below are confirmed. The bail bonds of the petitioner are cancelled and he is directed to be taken in custody, to serve out the remaining sentence. The trial court below will naturally issue appropriate non-bailable warrant, requiring the applicant to surrender to custody. Intimation shall also be given by the trial court to the surety, so that the applicant may surrender to the custody. Rule is discharged.

(D. P. Buch, J.)

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